IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.23227 of 2007
SHOBHIT RAI & ORS
Versus
STATE OF BIHAR & ANR

For the Petitioners: M/s. S.N.P. Sinha, Senior Advocate and Jitendra Narain Sinha, Advocate.
For the State. : Mr. Jharkhandi Upadhayay, A.P.P.
For O.P. No.2 : M/s. Shrinandan Prasad Singh and Ashok Kumar No.1, Advocates.

O R D E R

This application for quashing is directed against order dated 14.3.2007 passed by the learned Presiding Judge, Fast Track Court No.1, Vaishali at Hajipur , in Sessions Trial No.51 of 2006 whereby he has dismissed the petition filed by the petitioners under Section 227 Cr.P.C. and has directed them to be physically present in court for framing of charges under Sections 147, 447,341,323,436 I.P.C.

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On the basis of a written report submitted by one Kamal Rai, impleaded as O.P. No.2, herein, Hajipur(Sadar) P.S. Case No.232 of 2002 was registered against the petitioners under Sections 447, 341, 323, 436/34 I.P.C. on the allegation that his pattidar, Shobhit Rai(petitioner no.1 herein) was always given to quarrelling over the informant not vacating the land allegedly encroached upon by him till such time that measurements thereof was done. It is said that on this score threats were extended by the said Shobhit Rai for which a sanah was lodged. It is alleged that at about 9.30 P.M. on 19.6.2002 all the accused persons variously armed with lathi, bhala, farsa and jerrycans of kerosene oil came to the darwaza of the informant and ordered him

to vacate the said lands and on remonstration by the informant he was allegedly assaulted with lathi and sonta and when his cousins, Ashraf Rai and Suraj Rai, rushed to his rescue, they too were assaulted. It is further alleged that thereafter, on the orders of Shobhit Rai, Rambabu Rai sprinkled kerosene oil on the house of the informant and Harbansh Rai set fire thereto as a result whereof all the goods and articles stored therein as also the house itself was reduced to ashes.

It appears that the police after due investigation found all the allegations against the petitioners to be false and accordingly submitted a final form against them. But a case under Section 435/34 I.P.C. appeared to have been made out against unknown. It further appears that a protest petition was filed by the informant which proceeded as a complaint case and after an enquiry under Section 202 Cr.P.C. cognizance was taken by the learned Magistrate and the case was subsequently committed to the Court of Sessions. The discharge petition filed by the petitioners was rejected by the impugned order.

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Assailing the impugned order the learned counsel for the petitioners submitted that from perusal of the records it would be apparent that no case at all had been made out against the petitioners and they were being sought to be falsely prosecuted by their pattidar only for illegal gains and with ulterior motive due regard being had to the existence of land disputes between them. The falsity of the case was sought to be emphasized by reference to the police investigation in course whereof it was found that the place of occurrence was not the house of the informant but his palani. Grievance was also sought

to be raised against the trial Judge for not having taken heed of the compromise petition having been filed.

The law in respect of discharge under Sections 227 and 228 Cr.P.C. was laid down by the Apex Court long ago in the decision of State of Bihar Vs. Ramesh Singh (AIR 1977 S.C. 2018) and the same, with minor adjustments, still holds the field. It was held:-

"Reading Ss. 227 and 228 together in juxtaposition , as they have got to be , it would be clear that at the beginning and the initial stage of the trial the truth , veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S.227 or S.228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction.

Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there

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will be no sufficient ground for proceeding with the trial."

Again in Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia reported in (1981)1 S.C.C. 715 the Apex Court while examining the scope of Section 227 Cr.P.C. observed:-

"Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused." The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate inquiry in sifting and weighing the materials. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime."

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Applying the ratio of the decisions of the Apex Court to the impugned order, I am of the opinion that there is no illegality therein. There appeared sufficient materials before the learned trial Judge to think that there was enough evidentiary material on record to warrant the trial as would be apparent from the order.

I find no merit in this application which is accordingly dismissed.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 18th of July, 2008.
Pradeep Srivastava/A.F.R.